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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/629,072	07/28/2003	Chi Yung Fu		6146

7590 11/04/2004  
CHI YUNG FU  
1005 DUNCAN ST.  
SAN FRANCISCO, CA 94131

EXAMINER

FRANK, RODNEY T

ART UNIT PAPER NUMBER

2856

DATE MAILED: 11/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/629,072	<b>Applicant(s)</b> FU, CHI YUNG	
	<b>Examiner</b> Rodney T. Frank	<b>Art Unit</b> 2856	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 29 July 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Double Patenting*

1. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

2. Claims 1-4 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 1 of prior U.S. Patent No. 6,598,459. This is a double patenting rejection.

3. Claim 5 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 2, 3, and 6 of prior U.S. Patent No. 6,598,459. This is a double patenting rejection.

4. Claim 6 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 4 of prior U.S. Patent No. 6,598,459. This is a double patenting rejection.

5. Claim 7 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 5 of prior U.S. Patent No. 6,598,459. This is a double patenting rejection.

6. Claim 8 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 7 of prior U.S. Patent No. 6,598,459. This is a double patenting rejection.

7. Claim 9 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 8 of prior U.S. Patent No. 6,598,459. This is a double patenting rejection.

8. Claims 10, 13, 14, and 15 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 9 of prior U.S. Patent No. 6,598,459. This is a double patenting rejection.

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9. Claim 11 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 10 of prior U.S. Patent No. 6,598,459. This is a double patenting rejection.

10. Claim 12 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 11 of prior U.S. Patent No. 6,598,459. This is a double patenting rejection.

11. Claim 16 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 12-14 of prior U.S. Patent No. 6,598,459. This is a double patenting rejection.

12. Claim 17 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 15 of prior U.S. Patent No. 6,598,459. This is a double patenting rejection.

13. Claim 18 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 16 of prior U.S. Patent No. 6,598,459. This is a double patenting rejection.

### ***Response to Arguments***

1. Applicant's arguments filed 29 July 2004 have been fully considered but they are not persuasive. The applicant primary argument is that the patent office made an error in issuing the 6,598,459 patent. The applicant states that the file had to be reconstructed after it was used and it was issued with the wrong claims. Though this may be the case, upon examination of the parent file for the 6,598,459 patent, which was issued in July of 2003, there is no indication of the applicant filing any certificate of correction or requesting any re-exam of the application. With this in mind, it is the stance of the Patent Office that the 6,598,459 patent, as published, is a valid patent and therefore the claims as published are correct since the applicant has had substantial time which to seek a correction. For at least this reason, the examiner feels the double patenting rejection is valid.

***Conclusion***

2. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rodney T. Frank whose telephone number is (571) 272-2193. The examiner can normally be reached on M-F 9am -5:30p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hezron E. Williams can be reached on (571) 272-2208. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

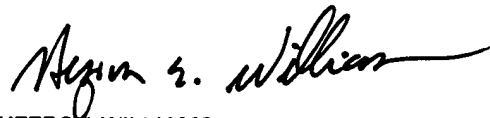
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RTF

October 19, 2004

A handwritten signature in black ink, appearing to read "Hezron Williams", with a long horizontal flourish extending to the right.

HEZRON WILLIAMS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2800